

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2234.05
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: March 14, 2005
DATE OF REPORT: April 11, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 6, 2005

COMPLAINT ISSUES:

Whether the Carmel Clay Schools and the Hamilton-Boone-Madison Special Services Cooperative violated:

511 IAC 7-27-4(c)(1) by failing to utilize the case conference committee to take into consideration the concerns of the parent for enhancing the education of the student when developing an individualized education program at the case conference held on August 9, 2004.

511 IAC 7-27-3(a)(3) and (4) by failing to ensure that the case conference committee participants include one of the student's general education teachers and the parent(s) at the case conference held on August 9, 2004.

511 IAC 7-27-2(c) by failing to give the parent(s) adequate notice of the case conference meeting convened on August 18, 2004, early enough to ensure that one or both parents have the opportunity to attend.

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written report of the case conference committee after the case conferences convened on August 9 and 18, 2004.

511 IAC 7-27-5(d)(3) by failing to obtain written consent from the parent when the School proposed a revised individualized education program that involves a change of placement at the case conference convened on August 18, 2004.

FINDINGS OF FACT:

1. The Student has been identified as other health impaired (OHI) and determined eligible for special education and related services.
2. On January 10, 2005, the Complainant and the Complainant's attorney entered into a Settlement Agreement with the School to resolve the issues raised in a request for a due process hearing filed on May 17, 2004. Pursuant to the *Release and Discharge* terms, the Complainant gave up the right to pursue all past and present claims in exchange for considerations offered by the School. It does not preclude the Complainant's right to pursue issues occurring subsequent to January 10, 2005, but does restrict the Complainant's right to pursue any past claims or claims that arose during the due process hearing. The Independent Hearing Officer (IHO) reviewed the Settlement Agreement and approved it, finding that the Settlement Agreement resolved all matters raised in the due process request. The IHO ordered the dispute dismissed and issued an Order to that effect on January 12, 2005. The Complainant did not appeal this final Order.

3. The Student's case conference committee convened on August 9, 2004, and continued on August 18, 2004, as a result of the IHO's interim order. The Complainant did not appeal to the IHO or otherwise refer an issue(s) involving alleged procedural errors or other matters with respect to the conduct of the parties involved in the due process hearing, although the IHO had jurisdiction.

CONCLUSIONS:

Findings of Fact #2 and #3 indicate that because the alleged procedural violations occurred during the pendency of the due process hearing, the Complainant is precluded by the terms of the Settlement Agreement from now raising the above issues in a complaint. Therefore, no violation is found with respect to:

- (1) 511 IAC 7-27-4(c)(1)
- (2) 511 IAC 7-27-3(a)(3) and (4)
- (3) 511 IAC 7-27-2(c)
- (4) 511 IAC 7-27-5(c)
- (5) 511 IAC 7-27-5(d)(3).

The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.